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| APPLICATION NO.              | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|------------------------------|-------------|----------------------|---------------------|------------------|
| 09/833,925                   | 04/12/2001  | Ronald Patrick Doyle | 5577-230            | 3856             |
| 20792                        | 7590        | 11/16/2005           | EXAMINER            |                  |
| MYERS BIGEL SIBLEY & SAJOVEC |             |                      | CHANG, SUNRAY       |                  |
| PO BOX 37428                 |             |                      |                     |                  |
| RALEIGH, NC 27627            |             |                      | ART UNIT            | PAPER NUMBER     |
|                              |             |                      | 2121                |                  |

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| <b>Office Action Summary</b> | Application No. | Applicant(s) |
|------------------------------|-----------------|--------------|
|                              | 09/833,925      | DOYLE ET AL. |
| Examiner                     | Art Unit        |              |
| Sunray Chang                 | 2121            |              |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 03 October 2005.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) \_\_\_\_\_ is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-6 and 8-33 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

**DETAILED ACTION**

1. This office action is in responsive to the paper filed on October 3<sup>rd</sup>, 2005.
2. Claims 1 – 6 and 8 – 33 are presented for examination.

Claims 1 – 6 and 8 – 33 are rejected.

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 1 – 12, 16 – 26 and 30 – 33 are rejected** under 35 U.S.C. 102(e) as being anticipated by John B. Abjanic (U.S. Patent No. 6,732,175, and referred to as **Abjanic** hereinafter).

**Regarding independent claims 1, 30 and 32, Abjanic teaches,**

Art Unit: 2121

- A method of distributing workload [workload balancing] between a plurality of servers [among a group of servers], [Col. 7, Lines 4 – 6; see also Fig. 1 and Col. 5, Line 28 – Col. 7, Line 23] the method comprising:
  - receiving a plurality of requests [receive a message] over a first connection; [210, Fig. 1, Col. 5, Line 29 – Col. 6, Line 39; messages, Col. 7, Line 5]
  - parsing the plurality of requests to determine application layer information associated with each of the plurality of requests; [parse, 215, Fig. 1, Col. 6, Lines 40 – 49]
  - selecting destination servers [changed, updated, redirect] for corresponding ones of the plurality of requests based on the determined application layer information associated with each of the plurality of requests; [220, Fig. 1, Col. 6, Lines 50 – 62] and
  - distributing [directs or switches] the plurality of requests to the corresponding selected destination servers over a plurality of second connections associated with respective ones of the destination servers. [225, Fig. 1, Col. 6, Line 63 – Col. 7, Line 22]
  - determining if the determined application layer information associated with each of the plurality of requests is relevant application layer information; [determine if there is a match, Col. 6, Lines 53 – 54]
  - selecting one of a subset of the destination servers if the application layer information associated with each of the plurality of requests is relevant application layer information; [configuration patterns may be dynamically changed or updated ... detect the failure ... then update ... redirect, Col. 6, Lines 54 – 62] and
  - selecting a destination server other than a destination server in the subset of the destination servers if the application layer information associated with each of the plurality of requests is

not relevant application layer information. [configuration patterns may be dynamically changed or updated ... detect the failure ... then update ... redirect, Col. 6, Lines 54 – 62]

**Regarding dependent claim 2,**

A method according to claim 1, wherein

- the first connection comprises an HTTP 1.1 connection. [HTTP 1.1, Col. 5, Lines 54 – 58]

**Regarding dependent claims 3 and 23,**

A method according to claim 1, wherein parsing the plurality of requests comprises:

- determining a start point and an end point [<from> </from>, <to> </to>, Col. 5, Lines 50 – 67; start tag, end tag, Col. 6, Lines 13 – 14] for each of the plurality of requests within the first connection [HTTP 1.1, Col. 5, Lines 54 – 58]; [see also Col. 5, Line 28 – Col. 6, Line 49] and
- identifying application layer information within each of the plurality of requests. [categorizing the characters or XML data, Col. 6, Line 47]

**Regarding dependent claims 4 and 22,**

A method according to claim 3, wherein the application layer information comprises

- layer 7 information and above. [request-line, <PurchaseBook> Col. 5, Lines 45 – 67]  
Applicants define “layer 7 information and above”, according to specification [Page 3, Line 32 to Page 4, Line 2], may be a type of request, a client identification, and individual user identification, and/or a cookie.

**Regarding dependent claims 5 and 21,**

A method according to claim 3, wherein the application layer information comprises

- at least one of a type of request, a client identification, an individual user identification, and a cookie. [request-line <PurchaseBook> Col. 5, Lines 45 – 67]

**Regarding dependent claim 6,**

A method of claim 1, wherein the plurality of requests comprise

- a plurality of Hypertext Transport Protocol(HTTP) requests. [HTTP request, Col. 5, Line 41]

**Dependent claim 7 is cancelled,**

**Regarding dependent claims 8 and 19,**

A method of claim 7, wherein selecting one of a subset of the destination servers if the application layer information associated with each of the plurality of requests is relevant application layer information, further comprises:

- determining a load associated with respective destination servers in the subset of destination servers; [busy, less busy, failed, Col. 6, Lines 60 – 62] and
- selecting the destination server in the subset of the destination servers based on the determined load. [redirect certain message from busy servers to servers which are less busy, Col. 6, Lines 60 – 62]

**Regarding dependent claims 9 and 20,**

A method of claim 7, wherein the subset of destination servers includes

- at least one server which is to receive requests having an indication of high priority, [markup] and wherein the indication of high priority is determined based on the existence and nonexistence of relevant application layer information. [the application data or XML data is then compared to one or more configuration patterns or queries, Col. 6, Lines 50 – 54; see also Col. 6, Lines 50 – 62]

**Regarding dependent claims 10 and 24,**

A method according to claim 1, wherein distributing the plurality of requests comprises:

- determining if a second connection [multiple matches] associated with a selected destination servers exists [specific server]; [Col. 7, Lines 1 – 6 and also Col. 6, Line 63 – Col. 7, Lines 15]
- establishing the second connection to the selected destination server if the second connection does not exist; [do not include XML data, add unnecessary latency in the message forwarding path, Col. 8, Lines 44 – 52]
- distributing a request to the selected destination servers over the second connection; [routing or switching, Col. 8, Lines 21 – 26] and
- repeating the determining, establishing and distributing for each of the plurality of requests. [if ... then; incoming messages, Col. 8, Lines 21 – 26]

**Regarding dependent claims 11 and 25,**

A method according to claim 1, wherein

- receiving, parsing, selecting and distributing are carried out by an application executing on a data processing system. [Fig. 2, Col. 5, Lines 9 – 10, and 28 – 30; see also Col. 5, Lines 9 – 39]

**Regarding dependent claims 12 and 26,**

A method according to claim 1, further comprising

- tracking the plurality of requests and a plurality of corresponding responses to the plurality of requests. [if there is no match; if there are multiple matches, Col. 7, Lines 2 – 7]

**Regarding independent claims 16, 31 and 33, Abjanic teaches,**

- A method of distributing workload [loading balancing] between a plurality of servers [group of servers], [Col. 7, Lines 4 – 6] wherein each of the plurality of servers is executing an instance of an application which communicates over a network [between a network] such that each of a plurality of HTTP requests within a single HTTP 1.1 connection to the application may be distributed to any one of the plurality of servers, [processing nodes: web servers, application servers, fulfillment servers, XML servers, routers, switches, Col. 2, Line 65 – Col. 3, Line 9; see also Col. 3, Lines 10 – 15] the method comprising:
  - defining a subset of the plurality of servers which are to receive HTTP requests having an indication of high priority; [multiple matches, Col. 7, Line 3; see Col. 6, Line 63 – Col. 7, Line 15]

- establishing an HTTP 1.1 connection responsive to receiving a request for an HTTP 1.1 connection to the application over the network; [broker translates ... for return or replies, Col. 10, Lines 56 – 67; HTTP 1.1, Col. 5, Line 53]
- receiving a first Hypertext Transport Protocol(HTTP) request within the HTTP 1.1 connection; [referred back to rejections to claims 1, 30 and 32]
- parsing the first HTTP request to determine if the first HTTP request has an indication of high priority based on application layer information included in the first HTTP request; [referred back to rejections to claims 1, 30 and 32] and
- distributing the first HTTP request to one of the subset of the plurality of servers over a first connection if the first HTTP request has an indication of high priority. [referred back to rejections to claims 1, 30 and 32]

**Regarding dependent claim 17,**

A method according to claim 16, further comprising:

- distributing the first HTTP request [message] to a server other than a server in the subset [default server] of the destination servers if the first HTTP request does not have an indication of high priority [matching configuration pattern]. [Col. 9, Lines 1 – 10]

**Regarding dependent claim 18,**

The method according to claim 16, further comprising:

- receiving a second HTTP request within the HTTP 1.1 connection parsing the second HTTP request to determine if the second HTTP request has an indication of high priority based on

application layer information included in the second HTTP request; [Col. 6, Line 39 – Col. 7, Line 23]

- distributing the second HTTP request to one of the subset of the plurality of servers over a second connection if the second HTTP request has an indication of high priority; [Col. 6, Line 39 – Col. 7, Line 23] and
- repeating the receiving, parsing and distributing steps for each subsequent HTTP request received within the HTTP 1.1 connection. [Col. 6, Line 39 – Col. 7, Line 23]

Examiner further explains, the second HTTP request is transferring individually with the first HTTP request described in claim 16, basically is another message; **Abjanic** teaches more than one HTTP request [balance messages, Col. 7, Line 5; forward some messages, Col. 7, Line 11, direct or switch messages, Col. 7, Lines 13 – 14] for processing.

#### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. **Claims 13 – 15 and 27 – 29 are rejected** under 35 U.S.C. 103(a) as being unpatentable over **Abjanic**, and in view of Mohit Aron et al. (“Efficient Support For P-HTTP in Cluster-Based Web Servers”, Department of Computer Science, Rice University, June, 1999, and referred to as Aron hereinafter).

(**Abjanic** as set forth above generally discloses the basic inventions.)

**Regarding Claims 13 and 27,**

**Abjanic** teaches routing the requests using network address translation. [broker also translates destination addresses, Col. 10, Lines 56 – 67]

**Abjanic** does not teach a routing layer of a communication protocol stack.

**Aron** teaches a routing layer [user-level processes, Page 10, Col. 1, Line 22] of a communication protocol stack [protocol stacks, Page 10, Col. 1, Line 23], for the purpose of providing a control session.

**Regarding Claims 14 and 28,**

**Abjanic** does not teach using session control translation at the routing layer of the communication protocol stack.

**Aron** teaches using session control [control session, Page 10, Col. 1, Line 34] translation at the routing layer [user-level processes, Page 10, Col. 1, Line 22] of the communication protocol stack [protocol stacks, Page 10, Col. 1, Line 22 – 23].

**Regarding Claims 15 and 29,**

**Abjanic** does not teach routing the corresponding responses to the requests using network address translation at a routing layer of a communication protocol stack.

**Aron** teaches routing the corresponding responses to the requests [sending multiple server responses, Page 2, Col. 1, Line 29] using session control [control session, Page 10, Col. 1, Line 34] translation at the routing layer [user-level processes, Page 10, Col. 1, Line 22] of the communication protocol stack [protocol stacks, Page 10, Col. 1, Line 22 – 23], for the purpose of forwarding the server's responses back to the clients who made requests.

**Response to Amendment**

**Claim Rejections - 35 USC § 102 & 103**

5. Applicants' argument regarding "**Abjanic** does not disclose a subset of servers" is disagreed with. **Abjanic** teaches "the configuration patterns may be dynamically changed or updated by a user or by a program or application. ... a program may detect the failure of one or more servers and/or detect the response time of servers ... the available servers"

6. Applicants' argument regarding "**Abjanic** does not disclose a specific subset of servers that have been set aside to process requests having an indication of high priority" is disagreed

with. **Abjanic** teaches “directed to the specific server as indicated by the configuration pattern ... direct the message based to the first match ... or a load balancing policy can be used to balance messages ... if there’s no match, the message can be directed to a default server”

**Conclusion**

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunray Chang whose telephone number is (571) 272-3682. The examiner can normally be reached on M-F 7:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Anthony Knight can be reached on (571) 272-3687. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-746-3506.

Sunray Chang  
Patent Examiner  
Group Art Unit 2121  
Technology Center 2100  
U.S. Patent and Trademark Office



Anthony Knight  
Supervisory Patent Examiner  
Group 3600

November 9, 2005